

United States
Circuit Court of Appeals
For the Ninth Circuit.

THOMAS DAY COMPANY, a Corporation, and
WHITMAN SYMMES,

Appellants,

vs.

CLAUDE R. KING, Receiver of THOMAS DAY
COMPANY, ROBERTS MANUFACTUR-
ING COMPANY, a Corporation, and GILL
VIRDEN COMPANY, a Corporation,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for
the Northern District of California,

Southern Division.

FILED

MAR 6 - 1930

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals

For the Ninth Circuit.

THOMAS DAY COMPANY, a Corporation, and
WHITMAN SYMMES,

Appellants,

vs.

CLAUDE R. KING, Receiver of THOMAS DAY
COMPANY, ROBERTS MANUFACTUR-
ING COMPANY, a Corporation, and GILL
VIRDEN COMPANY, a Corporation,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for
the Northern District of California,
Southern Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of Publication in "The Recorder" of Notice of Sale of Assets at Court Sale....	30
Amended Petition for Appointment of Temporary Receiver.....	18
Answer of Defendant.....	9
Assignment of Errors.....	52
Bill in Equity for Receiver.....	2
Bond on Appeal.....	57
Certificate of Clerk U. S. District Court to Transcript of Record.....	61
Citation on Appeal.....	61
Deed of Conveyance and Bill of Sale.....	46
EXHIBITS:	
Exhibit "A"—Order Confirming Sale of Assets	48
Minutes of Court—November 25, 1929—Order Confirming Sale of Assets.....	43
Names and Addresses of Attorneys of Record..	1
Notice of Sale of Assets at Court Sale.....	30
Opposition of Defendant to Petition of Receiver to Sell the Goodwill of Defendant	

	Index.	Page
and the Right of the Purchaser of the Assets to Hold Itself Out as the Successor of the Thomas Day Company.....		37
Opposition to Petition of Receiver to Sell the Right of the Purchaser to Hold Itself Out as the Successor of Thomas Day Company.		34
Order Appointing Receiver.....		11
Order Appointing Temporary Receiver (Filed September 11, 1929).....		17
Order Appointing Temporary Receiver (Filed September 20, 1929).....		21
Order Confirming Sale of Assets.....		43
Petition for Appeal and Order Allowing Same.		51
Petition for Appointment of Temporary Receiver		14
Petition for Confirmation of Sale, or for the Adoption of a Reorganization Plan, or for the Continuation of the Present Receivership		23
Praeceptum for Transcript of Record.....		59
Receiver's Return of Sale.....		39
Substitution of Attorneys.....		13

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

THOMAS, BEEDY, PRESLEY & PARAMORE,
Esqrs., 315 Montgomery Street, San Francisco,
California, Attorneys for Thomas Day Com-
pany,

STERLING CARR, Esq., 310 Sansome Street, San
Francisco, California, Attorney for Whitman
Symmes,
Attorneys for Appellants.

KNIGHT, BOLAND & CHRISTIN, Esqrs., 351
California Street, San Francisco, California,
Attorneys for Claude R. King, Receiver of
Thomas Day Company,

THEODORE J. SAVAGE, Esq., Humboldt Bank
Bldg., San Francisco, California, Attorney for
Roberts Manufacturing Co.,

ARTHUR DUNN, Jr., Esq., 810 Balfour Building,
San Francisco, California, Attorney for Gill
Virden Company,
Attorneys for Appellees.

In the Southern Division of the United States District Court, for the Northern District of California.

2244-S.

GILL VIRDEN COMPANY, a Corporation,
Complainant,

vs.

THOMAS DAY COMPANY, a Corporation,
Defendant.

BILL IN EQUITY FOR RECEIVER.

Complainant, a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Philadelphia, Pennsylvania, brings this bill of complaint on its behalf and on behalf of all other creditors of Thomas Day Company, a corporation, who shall gain herein, against the said Thomas Day Company, a corporation organized and existing under and by virtue of the laws of the State of California, and respectfully shows as follows:

I.

That complainant is now and at all times herein mentioned was a citizen and resident of the State of Pennsylvania, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, organized for the purpose of doing a general manufacturing business and for the sale of articles necessary for the manufacture of lighting fixtures, with its principal place of business at

Philadelphia, Pennsylvania. That the defendant, Thomas Day Company, is a corporation organized and existing under the laws, and a citizen and resident of, the State of California, and doing and transacting business as such in the Southern Division of the Northern District thereof.

II.

That within four years last past, defendant became indebted to complainant [1*] herein for goods, wares and merchandise in the sum of \$3,217.29, and that defendant agreed to pay said sum for said goods, wares and merchandise, and said sum is the reasonable value thereof. No part of said sum has been paid, and complainant is informed and believes, and upon such information and belief alleges that said sum has not been paid for the reasons hereinafter set forth.

III.

Defendant was incorporated for the purpose of engaging in, and ever since the date of its corporation it has engaged in, the business of manufacturing, handling and selling lighting fixtures and materials pertaining thereto, and has enjoyed a business not only in the City and County of San Francisco, but on the entire Pacific Coast, and by reason of being in business for many years last past, has built up a large and profitable business, so that at normal and reasonable times its net profit has been and should be about \$40,000 per annum.

*Page-number appearing at the foot of page of original certified Transcript of Record.

In the course of its business as aforesaid, defendant has accumulated total assets of the reasonable value of about \$450,000, consisting of real estate, plant, equipment, bills receivable, manufacturing fixtures on hand, stock on hand and notes receivable. Said real estate, plant, equipment, bills receivable and stock on hand have a largely enhanced value as a part of a going concern, all of which would be lost if any of the same should be disposed of separately.

IV.

During the last few years, defendant has manufactured an overproduction of lighting fixtures and accumulated a very large amount of stock on hand and permitted many accounts receivable to accrue. By reason thereof, defendant is not at this time able to meet its pressing obligations, but it has [2] assets far in excess of its liabilities.

In the conduct of its business as aforesaid, defendant has incurred indebtedness and liabilities substantially as follows: to banks and note holders, approximately \$35,000; to trade creditors, approximately \$100,000. Defendant is unable to pay the aforesaid obligations or any part of them as they mature, and is unable to carry on its business as it is unable to meet its weekly payrolls.

Complainant is informed and believes, and upon such information and belief alleges that certain of said creditors of defendant threaten to and will commence actions for the purpose of recovering the amounts due them, respectively, as aforesaid, and in connection therewith will attach and garnish the

property of defendant and thereafter sell the same under judicial and legal process. The result of such conduct of behalf of creditors will be that various items of property and assets will be sold for much less than their actual value, and in addition thereto, the value of defendant as a going concern will be destroyed—the result of which will be that defendant will become and be insolvent and there will be insufficient property and assets to pay the claims and obligations owned by defendant as aforesaid, and complainant and other creditors will lose substantial amounts of their claims.

Complainant is advised and believes, and therefore alleges that if a Receiver is appointed, necessary money can be obtained for the conducting of said business, and that advantage can be taken of uncompleted contracts of the defendant which are now in course of performance, and the profits accruing therefrom can be converted for the use and benefit of complainant and other creditors of the defendant. The property of defendant could be sold as a whole and a going concern for a much larger sum than if sold in smaller parcels under judicial [3] process.

That it is to the best interests of the complainant and to other creditors of the defendant that a Receiver be appointed by this Court for the properties of the defendant, with directions to take possession, custody and control of all the properties and assets of the defendant and to operate the business of the defendant and, if possible, pay the claims of complainant and other creditors of the defendant, and

if not possible, under the jurisdiction and order of this Court to sell said property as a whole for the like use and benefit of complainant and other creditors of the defendant, and that the said Receiver be privileged to approve or disapprove any existing contracts of the defendant.

INASMUCH AS, THEREFORE, complainant has no adequate remedy at law and can have relief only in equity, complainant files this bill on behalf of itself and any and all other creditors who may come in and contribute to the expenses hereof, and prays for equitable relief as follows:

I.

That the rights of complainant and all of the other creditors of defendant may be ascertained and declared, and that the Court will fully administer the property, business and assets of defendant, and will, for such purpose, marshal the assets of defendant and ascertain the rights, liens and priorities of the persons interested therein.

II.

For the purpose of preserving the business, property and assets of defendant and operating and conducting the same as a unit and to preserve its integrity as a going concern, a Receiver be appointed to take possession of and hold the property, business and assets of defendant; that said Receiver [4] be authorized and directed to operate, manage and control the said business and assets in such manner as in his judgment will produce most satisfactory

results, so that the same may be continued in operation as a business unit, and to that end be authorized and directed to approve or disapprove the various contracts of defendant, and to execute and perform all contracts approved, and to the end aforesaid, and in the discretion of said Receiver, said Receiver be authorized to employ and discharge all the officers, managers, attorneys, agents and employees and to fix and pay compensation thereof, and to otherwise make such payments and disbursements as may be needful and proper in the conduct and operation of said business, and also to use and to collect and receive all moneys and profits from the operation and conduct thereof; that said Receiver be further authorized and directed to maintain and defend any and all suits at law and in equity necessary for the purposes aforesaid; and that it be further ordered that all persons, firms and corporations having possession and/or control of the business, property or assets of defendant shall deliver the same to said Receiver, and that his proper receipt therefor shall be full acquittance thereof, and that it be further ordered and decreed that all directors, officers, attorneys, servants and employees of defendant shall obey all of the orders and directions of said Receiver, and that all persons, firms and corporations be enjoined and restrained from interfering in any manner or form whatever with the property, business and assets of defendant, or with the orders and directions of said Receiver; and that said Receiver shall provide a bond in such sum and with such surety as may be approved by this Court,

conditioned that he will well and duly perform the duties of his office and duly account for [5] all moneys and property which may come into his hands, and abide by and perform any and all things which he may be directed to do.

III.

That a writ of subpoena be granted complainant, directed to defendant, requiring the defendant to appear herein upon a day certain and make full and perfect answer in the premises.

Lastly, for such other and further relief as the Court may deem meet and proper and equitable in the premises.

ARTHUR DUNN, Jr.,
Solicitor for Complainant.

State of California,
City and County of San Francisco,—ss.

Arthur Dunn, Jr., being first duly sworn, says: That he is the attorney for the Gill Virden Company, a Pennsylvania corporation, the complainant in the above-entitled action; that no officer of said complainant corporation is within the State of California, and for that reason affiant makes this affidavit and verification in its behalf.

That he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to such matters, that he believes it to be true.

ARTHUR DUNN, Jr.

Subscribed and sworn to before me this 1st day of December, 1928.

[Seal] CHALMER MUNDAY,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Dec. 3, 1928. [6]

[Title of Court and Cause.]

ANSWER OF DEFENDANT.

Comes now Thomas Day Company, a corporation, defendant herein, and answers the complaint of complainant herein as follows:

I.

The defendant admits all the allegations of said bill of complaint as true.

II.

The defendant joins in the prayer of said bill of complaint, and prays that this Court, sitting in Equity, may take possession of the property, business and assets of defendant through the appointment of a Receiver as prayed in said complaint, and thereby conserve the business of the defendant in unity, and conserve the assets thereof and prevent the same from being sacrificed and lost under any legal or other proceedings which can or may be taken, and to that end, that this Honorable Court authorize such Receiver to take possession of said

business and assets of said defendant to conserve the same, and particularly to manage, operate and conduct the business and assets of defendant, pay any and all indebtedness or to become due by defendant, and otherwise discharge the duties imposed by Courts upon Receivers in similar cases, and that the proceeds arising from the sale of said property, or any part [7] thereof, if any, shall be applied under the orders and decrees of this Court according to the rights, interest and equity of the parties herein interested, and that this Court will direct any persons in possession of any of the property of defendant to surrender the same to such Receiver.

JOHN E. MANDERS,

Solicitor for Defendant.

State of California,

City and County of San Francisco,—ss.

Whitman Symmes, being first duly sworn, says: That he is the President of the Thomas Day Company, a corporation, defendant in the above-entitled matter, and as such officer makes this verification in its behalf.

That he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters, that he believes it to be true.

WHITMAN SYMMES.

Subscribed and sworn to before me this 1st day of December, 1928.

[Seal] CHALMER MUNDAY,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Dec. 3, 1928. [8]

(Title of Court and Cause.)

ORDER APPOINTING RECEIVER.

Complainant above named having filed herein its bill of complaint, praying among other things, for the appointment of a Receiver herein, and the defendant having answered thereto,—

NOW, THEREFORE, upon motion of Arthur Dunn, Jr., solicitor for complainant, and having heard John E. Manders, solicitor for the defendant, and after due consideration thereof,—

IT IS ORDERED, ADJUDGED AND DECREED THAT CHARLES F. DUVAL be, and he is hereby, appointed Receiver of defendant Thomas Day, a corporation, and of all the property and assets of said defendant; that said Receiver be, and he is hereby, authorized and directed to immediately take possession of the said business and assets of said corporation, and is further authorized and directed to operate, manage and control the said business and assets in such manner as in his judgment will produce most satisfactory results, so that the same may be continued in operation as a busi-

ness unit, and to that end is authorized and directed to approve or disapprove, in his discretion, the various contracts of defendant, and to execute and perform all contracts approved, and to the end aforesaid, and in the discretion of said Receiver, said Receiver is authorized to employ and discharge all of the officers, managers, attorneys, agents and employees and to fix and pay the compensation thereof, and to otherwise make such payments and disbursements as may be needful and proper in the conduct and operation of said business, and also to use and to collect and receive all moneys and profits from the operation and conduct thereof. Said Receiver is further authorized and directed to [9] maintain and defend any and all suits at law and in equity necessary for the purposes aforesaid.

IT IS FURTHER ORDERED that all persons, firms and corporations having possession and/or control of the business, property or assets of defendant shall deliver the same to said Receiver, and his proper receipt therefor shall be full acquittance thereof, and it is further ordered and decreed that all directors, officers, attorneys, servants and employees of defendant shall obey all of the orders and directions of said Receiver, and that all persons, firms and corporations are enjoined and restrained from interfering in any manner or form whatever with the property, business and assets of defendant, and with the orders and directions of said Receiver.

IT IS FURTHER ORDERED that said Receiver shall provide a bond in the sum of \$20,000.00 with

sufficient surety to be approved by the Judge of this court, conditioned that he will well and duly perform the duties of his office and duly account for all moneys and property which may come into his hands, and abide by and perform any and all things which he may be directed to do.

Dated: December 3, 1928.

A. F. ST. SURE,
Judge of the U. S. District Court.

[Endorsed]: Filed Dec. 3d, 1928. [10]

(Title of Court and Cause.)

SUBSTITUTION OF ATTORNEYS.

To Plaintiff Above Named and to Its Attorney,
Arthur Dunn, Jr.:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that defendant above named has changed its attorneys in the above-entitled action and that Messrs. Thomas, Beedy, Presley & Paramore, Room 1119 California Commercial Union Building, 315 Montgomery Street, San Francisco, California, have been and they are substituted in the place of John E. Manders as attorney for defendant herein, and the undersigned hereby consent to said change of attorneys:

Dated: May 24, 1919.

[Seal]

THOMAS DAY COMPANY.

By WHITMAN SYMMES, Pres.,
Defendant.

JOHN E. MANDERS,

Attorney for Defendant.

We, the undersigned, hereby accept the above substitution of ourselves as attorneys for the defendant in the above-entitled action in the place and stead of John E. Manders.

Dated: May 24, 1919.

THOMAS, BEEDY, PRESLEY & PARAMORE,
Attorneys for Defendant.

Due service and receipt of a copy of the within substitution is hereby admitted this 24th day of May, 1929.

CHARLES A. CHRISTIN,

KNIGHT, BOLAND & CHRISTIN,

Attorneys for Receiver.

ARTHUR DUNN, Jr.,

Attorney for Complainant.

[Endorsed]: Filed May 27, 1929. [11]

(Title of Court and Cause.)

PETITION FOR APPOINTMENT OF TEMPORARY RECEIVER.

To the Honorable A. F. ST. SURE, Judge of the
United States District Court:

The petition of Charles A. Christin respectfully shows:

That he is the attorney for the Receiver of the Thomas Day Company, and has been since the inception of said receivership; that Charles F. Duval was the duly appointed, qualified and acting Receiver of said Company, appointed by this Court in the above-entitled matter.

That said Charles F. Duval was killed in an automobile accident on September 10, 1929.

That the affairs of said receivership, and the conduct thereof requires the immediate appointment of a temporary Receiver to carry on the business thereof until such time as its affairs may be straightened out and arrangements made for future conduct of the receivership.

That Claude R. King is now and for a long time prior hereto has been in charge of all the books and records of said company and said receivership, and is the person most familiar with all matters pertaining to said receivership, and is in all other respects fully qualified to act as a temporary Receiver of said company during the period of readjustment.

WHEREFORE, petitioner prays that this Honorable Court give and make its order appointing Claude R. King as the Temporary Receiver of the Thomas Day Company, a corporation, upon his posting bond in the sum of \$20,000.00 and taking the oath as required by law, and that he be authorized to act as Receiver of said Company until a successor

be appointed—and for such other order as to the Court may seem meet in the premises.

CHARLES A. CHRISTIN.

CHARLES A. CHRISTIN,

KNIGHT, BOLAND & CHRISTIN,

Attorneys for Receiver. [12]

State of California,

City and County of San Francisco,—ss.

Charles A. Christin, being first duly sworn, says: That he is the attorney for the Receiver in the above-entitled matter, and is the petitioner in the foregoing petition named; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to such matters, that he believes it to be true.

CHARLES A. CHRISTIN.

Subscribed and sworn to before me this 11th day of September, 1929.

[Seal]

LULU P. LOVELAND,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Sept. 11, 1929. [13]

(Title of Court and Cause.)

ORDER APPOINTING TEMPORARY RECEIVER.

Upon reading the verified petition of Charles A. Christin, and good cause appearing therefor—

IT IS HEREBY ORDERED that Claude R. King be, and he is hereby, appointed temporary Receiver of defendant Thomas Day Company, a corporation, and of all the property and assets of said corporation, in the place and stead of Charles F. Duval, the duly appointed, qualified and heretofore acting Receiver of said company who was killed September 10, 1929.

IT IS FURTHER ORDERED that said Claude R. King shall be vested with all the authority, powers and discretions of the Receiver as set forth in the order on file in the above-entitled action made and entered on December 3, 1928, appointing a Receiver in this matter.

IT IS FURTHER ORDERED that the temporary Receiver shall provide a bond in the sum of \$20,000.00, with sufficient surety to be approved by this Court, conditioned that he will well and duly perform the duties of his office and duly account for all moneys and property which may come into his hands, and abide by and perform any and all things which he may be by this Court directed to do.

IT IS FURTHER ORDERED that Charles A. Christin be, and he is hereby, appointed as attorney for said Receiver.

Dated: September 11, 1929.

HAROLD LOUDERBACK,
Judge of the U. S. District Court.

[Endorsed]: Filed Sept. 11, 1929. [14]

(Title of Court and Cause.)

AMENDED PETITION FOR APPOINTMENT
OF TEMPORARY RECEIVER.

To the Honorable A. F. ST. SURE, Judge of the
United States District Court:

The amended petition of Charles A. Christin respectfully shows:

That he is the attorney for the Receiver of the Thomas Day Company, and has been such since the inception of said receivership; that Charles F. Duval was the duly appointed, qualified and acting Receiver of said Company, appointed by this Court in the above-entitled matter; that said Charles F. Duval was killed in an automobile accident on September 10, 1929.

That the affairs of said receivership and the conduct thereof require the immediate appointment of a temporary Receiver to carry on the business thereof until such time as its business may be straightened out and arrangements made for the future conduct of the receivership.

That immediately upon being advised of the death of Mr. Duval, your petitioner called a meeting of the Creditors' Committee; this committee was ap-

pointed at the inception of the receivership to advise in all matters of business, and it meets with the Receiver to discuss and determine all matters of policy and business procedure. This meeting was called for 11:30 on the morning of September 11, 1929, and was attended by the following:

Charles A. Christin, attorney for Receiver; J. B. Robinson, representing the Bank of Italy, a creditor;

S. B. Rocchietti, representing Westinghouse Lamp Co., a creditor;

Whitman Symmes, president of Thomas Day Company, a creditor;

Sterling Carr, attorney for Whitman Symmes;

James Paramore, representing the stockholders of the Day Company;

Anson S. Blake, a creditor and assignee of Whitman Symmes;

B. Singer, representing the Board of Trade of San Francisco;

H. L. Clark, representing the American Brass & Bronze Co.;

C. D. Cunningham, representing the National Mortgage Company. [15]

The only member of the committee not there present was Mr. Baum, the local representative of Gill Virden Company, and he could not be located on the short notice necessitated.

The matter of the appointment of a temporary Receiver was fully discussed and debated, and it was the unanimous opinion of those present that Claude R. King was the man most fitted to fill the

position of Receiver at this time; Claude R. King is now and for a long time prior hereto has been in charge of all the books and records of said company and said receivership, and is the person most familiar with all matters pertaining to said receivership, and is in all other respects fully qualified to act as a temporary Receiver of said company during the period of readjustment, and has consented to so act.

WHEREFORE, petitioner prays that this Honorable Court give and make its order appointing Claude R. King as the temporary Receiver of the Thomas Day Company, a corporation, with like powers of the general Receiver, upon his posting bond in the sum of \$20,000, and taking the oath as required by law; and that he be authorized to act as Receiver of said company until a successor be appointed—and for such other order as to the Court may seem meet in the premises.

CHARLES A. CHRISTIN,

Petitioner.

CHARLES A. CHRISTIN,

KNIGHT, BOLAND & CHRISTIN,

Attorneys for Receiver.

State of California,

City and County of San Francisco,—ss.

Charles A. Christin, being first duly sworn, says: That he is the petitioner in the above-entitled matter named; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except [16] as to

matters therein stated on information and belief, and that as to such matters, he believes it to be true.

CHARLES A. CHRISTIN.

Subscribed and sworn to before me this 20th day of September, 1929.

[Seal] MARION CURTIS,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Sept. 20, 1929. [17]

(Title of Court and Cause.)

ORDER APPOINTING TEMPORARY RE-
CEIVER.

Upon reading the verified, amended petition of Charles A. Christin for the appointment of a temporary Receiver in the above-entitled matter, and good cause appearing therefor—

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Claude R. King be, and he is hereby appointed temporary Receiver of defendant Thomas Day Company, a corporation, and of all the property and assets of said corporation, in the place and stead of Charles F. Duval, the duly appointed, qualified and heretofore acting Receiver of said Company, who was killed September 10, 1929.

IT IS FURTHER ORDERED that said Claude R. King shall be and he is hereby vested with all the authority, powers and discretions of the Re-

ceiver as set forth in the order on file in the above-entitled action, made and entered on December 3, 1928, appointing a Receiver in this matter.

IT IS FURTHER ORDERED that the temporary Receiver shall provide a bond in the sum of \$20,000, with sufficient surety to be approved by this Court, conditioned that he will well and duly perform the duties of his office and duly account for all moneys and properties which may come into his hands, and abide by and perform any and all things which he may be by this Court directed to do.

IT IS FURTHER ORDERED that Charles A. Christin be, and he is hereby appointed as Attorney for said temporary Receiver.

IT IS FURTHER ORDERED that this order upon the amended petition of Charles A. Christin, confirms the order heretofore made herein on September 11, 1929, appointing said Claude R. King as temporary Receiver, and his power to act [18] thereunder is hereby ratified and confirmed.

Done in open court this 19th day of September, 1929.

A. F. ST. SURE,
Judge of the U. S. District Court.

[Endorsed]: Filed Sept. 20, 1929. [19]

(Title of Court and Cause.)

PETITION FOR CONFIRMATION OF SALE,
OR FOR THE ADOPTION OF A REOR-
GANIZATION PLAN, OR FOR THE CON-
TINUATION OF THE PRESENT RE-
CEIVERSHIP.

To Honorable A. F. ST. SURE, Judge of the
United States District Court:

The petition of Claude R. King respectfully
shows:

That he is now the duly appointed, qualified and
acting temporary Receiver of Thomas Day Com-
pany, a corporation, succeeding Charles F. Duval,
its Receiver; that said receivership has been con-
ducted since December of 1928, and endeavors have
been continuously made by your petitioner and his
predecessor to secure an advantageous sale of the
business or a workable reorganization thereof
which will redound to the benefit of creditors and
all interested in the receivership.

That the untimely death of Charles F. Duval has
precipitated the desire of your petitioner and its
Creditors' Committee to have some definite deci-
sion in the matter. There has been submitted to
your petitioner two firm offers of purchase, as fol-
lows:

1. Maxwell Hardware Company, a corporation,
has given your Receiver a certified check for \$5,000,
with a bid, in body as follows:

“We hereby make a flat bid for the following assets of the Thos. Day Company now in your hands. Thos. Day Company at 725 Mission St., San Francisco, California; also in Barker Bros. Building, Los Angeles, California, and in Salt Lake City, Utah. All the merchandise at the above-mentioned places; all the machinery, equipment and all patterns used in the manufacture of lighting fixtures, for the total sum of \$50,000.00. A certified check of 10% of the above, viz.: \$5,000.00, herewith.

“This bid is intended to cover all merchandise and [20] manufacturing implements wherever located in California, also name and good will of Thomas Day Co.”

2. Roberts Manufacturing Company, a corporation, has given your Receiver a certified check for \$6,000, with a bid, in body as follows:

“We offer to purchase for the cash sum of \$60,000 (Sixty Thousand Dollars), all the merchandise contained in the four story and basement building known as 725 Mission Street (through to Minna Street) San Francisco, California, also, all the machinery and equipment of factory and offices, together with all furniture and fixtures, patterns, chucks, dies, patents, catalogues, drawings and details. Our bid also covers all the merchandise and samples and drawings contained in the Barker Bros. Building, Los Angeles, California, the property of Thos. Day Company, also, any merchandise in warehouses or any other offices owned by Thos.

Day Company. This bid also covers name and good will of Thos. Day Company.

“Our bid is based on an examination and physical count of merchandise as of September 3, 1929. An adjustment to be made as of that date as to receipts and deliveries of merchandise.

“Our certified check for the sum of \$6,000 (Six Thousand Dollars) being 10% of the amount of this bid, is enclosed.” A supplement to this bid is as follows:

“In connection with our bid dated September 18th, 1929, we offer to finish and install all partly completed lighting fixture contracts for actual cost of labor and material and overhead, any profit to go to the creditors of Thos. Day Company. If there is a loss we would be reimbursed by the Receiver.”

Certain of the employees of Thomas Day Company have heretofore submitted to your Receiver's predecessor their plan as follows: [21]

“Employees form a corporation which will agree as follows:

“Corporation agrees to take selling end of business and pay one-half of Bookkeeping and Cost Dept. and all of electric lights, phones, etc., attached to show rooms, and \$500.00 per month service charge.

“Receiver agrees to give new corporation preference on anything in inventory excepting current purchases, purchases in transit, or regular commercial units purchased during receivership, at 50¢ on \$1.00 of cost.

“Receiver will continue to operate factory until he has completed all work now in process or contracted for and during his operation of factory, he will manufacture for new corporation such orders as they may take, new corporation to pay cost plus 10% for such work. When he has completed all his contracts he will turn over factory to them so that it may be operated by them and in lieu of rental for the use thereof, they shall place one-third of stock of new corporation in escrow, with escrow provision that all profits earned thereon shall be paid over quarterly to Receiver, for the creditors until such time as creditors claim are fully satisfied.

“During the life of this agreement, the new corporation will endeavor to use up as rapidly as possible all the merchandise remaining in the inventory for which they will pay 50¢ on the \$1.00 of cost, either factory cost or landed cost.

“Receiver is to have full access to all books and records of new corporation.

“All question of policy of operating shall be submitted to Receiver for approval so that creditors interests cannot be jeopardized.

“Either party has right to cancel the agreement by giving 10 days notice. [22]

“In event that this contract is carried to a successful conclusion and creditors are satisfied, the Receiver agrees to transfer all right, title and interest in factory, equipment and merchandise and remaining assets to new corporation in consideration of the said one-third earnings or as a bonus for

their sales services during the period of the contract with the understanding that this meets with the approval and sanction of the old Thomas Day Company.

“All factory charges are to be paid to the Receiver as the respective amounts are collected from the customer by the new corporation.

“The Sales Agreement begins on the morning of Monday, June 17th, 1929.”

Immediately following the receipt of the two bids above set forth, and the renewal by the employee of Thomas Day Company of their plan to carry on the business, your Receiver called a meeting of his Creditors' Committee which met with him at 3:30 o'clock on Friday, September 20, 1929, to discuss the alternatives and arrive at some decision. At said meeting there were present:

Your Receiver, Claude R. King, and Charles A. Christin, his attorney; J. B. Robinson, of Bank of Italy, a creditor; Brooke Mohun, of Sierra Financial Corporation, a creditor; Anson S. Blake, a creditor and assignee of Whitman Symmes; Sterling Carr, attorney for Whitman Symmes, a creditor; S. B. Rocchietti, of Westinghouse Lamp Co., a creditor; H. L. Clark, of American Brass & Bronze Co., a creditor. There was not there present Mr. Baum of Gill Virden Company, a member of said committee, nor anyone representing the Board of Trade of San Francisco, the remaining member of said committee. [23]

After a great deal of discussion, it was determined unanimously by that committee that your

Receiver should make return to this Court of the two firm offers received, together with the employees' plan, and at a hearing before this Court after notice to all interested parties and creditors, ask this Honorable Court for confirmation of sale to the highest bidder for cash, or for the sanction of the employees' plan or continuation of the receivership at present.

Your Receiver and his Creditors' Committee have been unable to arrive at a definite decision as to which bid or plan should be accepted and are unanimously of the opinion that an opportunity be given before this Honorable Court for a determination of what is best for the receivership and those interested therein. Your Receiver therefore returns to this Honorable Court for confirmation or rejection the two bids and the employees' plan heretofore submitted to him. Your Receiver has this day sent to all creditors and interested parties a notice of the hearing of this petition, and a request for higher bids or better plans to be submitted to him prior to the hearing, or presented in open court at the hearing.

WHEREFORE, your Receiver prays:

1. That this Honorable Court consider the bids and the plan here presented, together with any additional bids or plans offered prior to or at the hearing;

2. That after due consideration and hearing, this Honorable Court give and make its order confirming a sale of the assets of said receivership to the

highest bidder therefor; or approving the best plan offered;

3. That if this Court determine that no bid or plan offered is for the best interests of said receivership and those interested therein, that all bids and plans be rejected [24] and this Honorable Court make such other, further or different order as may be meet in the premises.

CLAUDE R. KING,

Temporary Receiver, Petitioner.

CHARLES A. CHRISTIN,

KNIGHT, BOLAND & CHRISTIN,

Attorneys for Receiver.

State of California,

City and County of San Francisco,—ss.

Claude R. King, being first duly sworn, says: That he is the temporary Receiver of Thomas Day Company, and as such is the petitioner in the above-entitled matter; that he has read said petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to such matters, that he believes it to be true.

CLAUDE R. KING.

Subscribed and sworn to before me this 23d day of September, 1929.

[Seal]

MARION CURTIS,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Sept. 23, 1929. [25]

(Title of Court and Cause.)

AFFIDAVIT OF PUBLICATION IN "THE
RECORDER" OF NOTICE OF SALE OF
ASSETS AT COURT SALE.

NOTICE OF SALE OF ASSETS AT COURT
SALE.

In the Southern Division of the United States Dis-
trict Court, for the Northern District of Cali-
fornia.

GILL VIRDEN COMPANY, a Corporation,
Complainant,

vs.

THOMAS DAY COMPANY, a Corporation,
Defendant.

NOTICE OF SALE OF ASSETS AT COURT
SALE.

Notice is hereby given that the undersigned, Claude R. King, receiver of the Thomas Day Company, a corporation, will sell, Tuesday, the 12th day of November, 1929, in open court, at ten o'clock A. M. of said day, at the courtroom of the above-entitled court, before Honorable A. F. St. Sure, Post Office Building, Seventh and Mission Streets, San Francisco, California, for cash, to the highest bidder therefor, the following:

All the assets of every character and description belonging to or used in the business of Thomas Day Company, except accounts receivable; all goods, wares and merchandise of every kind and character contained in the four-story and basement building known as 725 Mission Street, San Francisco, California, and in the place of business of Thomas Day Company in the Barker Brothers Building, Los Angeles, or in warehouses or other places; all furniture, fittings, furnishings and fixtures of every kind and description contained in the offices or other places of business of Thomas Day Company; all machinery, tools, equipment, appliances, and other personal property contained in or used in said company's factory; all patents, patent rights, chucks, dies, patterns, catalogs, drawings, details and all appliances and equipment of the designing department of said business, together with all samples and all automobiles or delivery vehicles; the business and the good will of the business of Thomas Day Company; the right of the purchaser to hold itself out as the successor of Thomas Day Company and as having acquired the good will thereof.

The terms and conditions of sale are cash, lawful money of the United States, 10 per cent at the time of sale and the balance upon confirmation by the above-entitled Court.

All of the above-mentioned property will be delivered to the purchaser upon confirmation, save and except that the Receiver of the Thomas Day Company reserves to himself all work in process

and the exclusive use of the factory and equipment therein and therefor for the period of ninety days after said confirmation.

Dated October 31, 1929.

CLAUDE R. KING,
Federal Receiver of Thomas Day Company.

CHARLES A. CHRISTIN,
KNIGHT, BOLAND & CHRISTIN,

Balfour Building, San Francisco, California,

Attorneys for Receiver.

Oct. 31 to Nov. 12, inclusive—dly.

Published in "The Recorder," 337 Bush Street, San Francisco, California. Phone Sutter 1190.

AFFIDAVIT OF PUBLICATION.

State of California,

City and County of San Francisco,—ss.

E. C. Luchessa, being first duly sworn, deposes and says: [26]

That he is and at all times hereinafter mentioned was a citizen of the United States, over the age of twenty-one years and a resident of said city and county; and is and was at and during all said times, the principal clerk of The Recorder Printing and Publishing Company, printers and publishers of "The Recorder," a newspaper of general circulation printed and published daily (Sundays and legal holidays excepted) in the city and county of San Francisco, State of California; that said "The

Recorder" is and was at all times herein mentioned, a newspaper of general circulation, as that term is defined by Section 4460 of the Political Code; its status as such newspaper of general circulation having been established, pursuant to Section 4462, Political Code, by a decree of the Superior Court of the City and County of San Francisco, Department No. 11 thereof, Hon. William P. Lawlor, Judge, made and entered on the 11th day of October, 1905, which said decree was restored by a judgment given in the Superior Court of the City and County of San Francisco, Department No. 11 thereof, Hon. William P. Lawlor, Judge, made and entered on the 2d day of December, 1907, and recorded in Record Book 15, at page 155 thereof; and as provided by said Section 4460, is and at all said times was published for the dissemination of local and telegraphic news and intelligence of a general character, having a *bona fide* subscription list of paying subscribers, and is not and never was devoted to the interests, or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professions, trades, callings, races or denominations; that at all said times said newspaper had been established, printed and published in said city and county of San Francisco, State of California, at regular [27] intervals for more than one year preceding the first publication of this notice herein mentioned; that said notice was set in type not smaller than nonpareil and was pre-

ceded with words printed in black-face type not smaller than nonpareil, describing and expressing in general terms the purport and character of the notice intended to be given; that a Notice of Sale of Assets at Court Sale in the above-entitled matter, of which the annexed is a true printed copy, was published in said newspaper on the following dates, to wit: October 31, 1929; and November 1, 2, 4, 5, 6, 7, 8, 9 and 12, 1929; being as often as said newspaper was published during said period; and further deponent sayeth not.

E. C. LUCHESSA.

Subscribed and sworn to before me this 12th day of November, 1929.

[Seal] CHARLES R. HOLTON,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed November 14, 1929. [28]

[Title of Court and Cause.]

OPPOSITION TO PETITION OF RECEIVER
TO SELL THE RIGHT OF THE PUR-
CHASER TO HOLD ITSELF OUT AS THE
SUCCESSOR OF THOMAS DAY COM-
PANY.

Now come Whitman Symmes, Mabel Symmes, Anson Blake and Anita D. S. Blake, and object to the sale by the Receiver of the right of the pur-

chaser to hold itself out as the successor of Thomas Day Company, all as set forth in the notice of sale of assets at court sale dated October 31, 1929, upon the following grounds, to wit:

1. That Whitman Symmes is the record owner of eighteen hundred and three (1803) shares of the capital stock of the said Thomas Day Company, all of which shares of capital stock are pledged to Mabel Symmes and Anita D. S. Blake to secure indebtedness due from the said Whitman Symmes to the said Mabel Symmes and the said Anita D. S. Blake.

2. That the said Thomas Day Company is indebted to Anson Blake in the sum of approximately forty-five thousand (45,000) dollars, made up of direct indebtedness of said corporation to the said Anson Blake in the sum of approximately ninety-seven hundred fifty (9750) dollars, and of indebtedness of said corporation to Whitman Symmes in the sum of approximately thirty-five [29] thousand two hundred and six (35,206) dollars, and which latter claim of the said Whitman Symmes against said corporation has heretofore been assigned to and is now held by the said Anson Blake.

3. That it is not for the best interests of said corporation defendant, or of its creditors or stockholders, that the property of said corporation be sold at this time; that it will be for the best interests of all of said parties if the said Receiver continues to operate said property until otherwise ordered by this Court.

4. That said parties above named, and each and all of them, hereby protest against the sale of the goodwill of said Thomas Day Company, and also against the giving or selling to said purchaser the right to hold itself out as the successor of Thomas Day Company, upon the following grounds, to wit:

(a) That said Receiver has no jurisdiction over said goodwill and/or said name "Thomas Day Company," and has no jurisdiction or right to give, sell or grant to said purchaser the right to hold itself out as the successor of Thomas Day Company;

(b) That the purchaser at such sale will not, in fact, be the successor of Thomas Day Company, by reason of the fact that neither the Receiver nor this Court has authority or jurisdiction to sell the name "Thomas Day Company," and that such right is not included within the receivership heretofore granted in the above-entitled matter;

(c) That the above-entitled court has no jurisdiction to order, direct or authorize said purchaser to hold itself out [30] as the successor of Thomas Day Company.

Dated: November 16th, 1929.

WHITMAN SYMMES,
STERLING CARR,

Attorneys for Whitman Symmes.

MABEL SYMMES,
ANSON BLAKE,
ANITA D. S. BLAKE,

By STERLING CARR,

Attorney for Mabel Symmes, Anson
Blake and Anita D. S. Blake.

STERLING CARR,

Attorney for Mabel Symmes, Anson Blake
and Anita D. S. Blake.

Rec'd copy of within this 18th day of November,
1929.

KNIGHT, BOLAND & CHRISTIN,

By C. A. CHRISTIN,

Attys. for Receiver.

[Endorsed]: Filed November 18, 1929. [31]

(Title of Court and Cause.)

OPPOSITION OF DEFENDANT TO PETITION
OF RECEIVER TO SELL THE GOODWILL
OF DEFENDANT AND THE RIGHT OF
THE PURCHASER OF THE ASSETS TO
HOLD ITSELF OUT AS THE SUCCESSOR
OF THOMAS DAY COMPANY.

Now comes Thomas Day Company, a corporation,
the defendant above named, and objects to the sale

by the Receiver of the goodwill of said defendant and the right of the purchaser of the assets of said defendant to hold itself out as the successor of Thomas Day Company, said defendant, all as set forth in the notice of sale of assets at court sale dated October 31, 1929, upon the following grounds, to wit:

1. That defendant Thomas Day Company is a corporation organized and existing under and by virtue of the laws of the State of California.

2. That the above-entitled court and said Receiver are without right, authority or jurisdiction to offer for sale, or to sell, the goodwill of said defendant and/or to authorize the purchaser of the assets of said defendant under said notice of sale dated October 31, 1929, to hold itself out as the successor of Thomas Day Company.

3. That it is not for the best interests of said corporation defendant, or of its creditors or stockholders, that the property [32] of said corporation be sold at this time; that it will be for the best interest of all of said parties if the said Receiver continues to operate said property until otherwise ordered by this Court.

4. That said Receiver has no jurisdiction over said goodwill and/or said name "Thomas Day Company," and has no jurisdiction or right to give, sell or grant to said purchaser the right to hold itself out as the successor of Thomas Day Company.

5. That the purchaser at such sale will not, in fact, be the successor of Thomas Day Company, by reason of the fact that neither the Receiver nor this

Court has authority or jurisdiction to sell the name "Thomas Day Company," and that such right is not included within the receivership heretofore granted in the above-entitled matter.

6. That the above-entitled court has no jurisdiction to order, direct or authorize said purchaser to hold itself out as the successor of Thomas Day Company.

Dated: November 25, 1929.

THOMAS DAY COMPANY,
By WHITMAN SYMMES,
President.

THOMAS, BEEDY, PRESLEY & PARAMORE,
GEORGE J. PRESLEY,
Attorneys for Said Defendant.

[Endorsed]: Filed Nov. 25, 1929. [33]

(Title of Court and Cause.)

RECEIVER'S RETURN OF SALE.

Claude R. King, Receiver of the Thomas Day Company, a corporation, hereby makes and files this, his return of sale of the following described property, together with his petition for confirmation, and respectfully shows to this Honorable Court as follows:

That heretofore, under and pursuant to the power and authority vested in him as Receiver, your petitioner, as such Receiver, offered for sale the follow-

ing assets of the Thomas Day Co. and caused notice of the day on or after which the sale of the interest of said corporation in and to said personal property would be made, to be published in the San Francisco "Recorder," a newspaper of general circulation, printed and published in the City and County of San Francisco, for ten days successively next before said day on which said sale would be made, in which notice said assets, hereinafter described, were set forth, and the affidavit attached hereto, more fully shows the nature and duration of said publication.

That thereafter, to wit, on the 17th day of November, 1929, the Roberts Manufacturing Company, in open court, bid and offered in writing to purchase and to pay the sum of Forty-two Thousand Five Hundred Dollars (\$42,500.00), for the assets of the Thomas Day Co. hereinafter described; thereupon on said day your petitioner, as such Receiver, accepted said bid and sold the interest of said corporation in and to said assets, subject to confirmation of said sale by this court.

Said assets hereinabove referred to, and the interest of said corporation therein, so sold as aforesaid, are as follows:

All the assets of every character and description belonging to or used in the business of Thomas Day Company, except [34] accounts receivable; all goods, wares and merchandise of every kind and character contained in the four-story and basement building known as #725 Mission Street, San Francisco, California, and in the place of business of

Thomas Day Company in the Barker Brothers Building, Los Angeles, or in warehouses or other places; all furniture, fittings, furnishings and fixtures of every kind and description contained in the offices or other places of business of Thomas Day Company; all machinery, tools, equipment, appliances, and other personal property contained in or used in said company's factory; all patents, patent rights, chucks, dies, patterns, catalogs, drawings, details and all appliances and equipment of the designing department of said business, together with all samples and all automobiles or delivery vehicles; the business and the goodwill of the business of Thomas Day Company; the right of the purchaser to hold itself out as the successor of Thomas Day Company and as having acquired the goodwill thereof.

The terms and conditions of sale are cash, lawful money of the United States, 10 per cent at the time of sale and the balance upon confirmation by the above-entitled court.

WHEREFORE, your Petitioner prays that an order be made herein confirming said sale and authorizing your petitioner, as such Receiver, to deliver possession of the above-described property to the purchaser thereof, subject to the following terms and conditions:

1. The Receiver reserves all right, title and interest in and to all work in process.

2. The Receiver reserves the right to the exclusive use of all factory equipment and machinery necessary to complete said work in process. [35]

3. The Receiver agrees to pay the rent for the premises during the time he retains possession.

4. The Receiver agrees to pay the purchaser for all materials used in completing said work in process.

5. The Receiver agrees to enter into no new contracts from and after the date of sale.

And your petitioner further prays for such other and further orders as shall be just and proper.

CLAUDE R. KING,
Receiver, Thomas Day Company,
Petitioner.

CHARLES A. CHRISTIN,
KNIGHT, BOLAND & CHRISTIN,
Attorneys for Receiver.

[Endorsed]: Filed Nov. 25, 1929. [36]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 25th day of November, in the year of our Lord one thousand nine hundred and twenty-nine. Present: The Honorable A. F. ST. SURE, District Judge.

(Title of Cause.)

MINUTES OF COURT—NOVEMBER 25, 1929—
ORDER CONFIRMING SALE OF ASSETS.

The petition for the confirmation of sale of personal property came on to be heard, Arthur Dunn, Jr., Esq., appearing for the Receiver; Sterling Carr, Esq., appearing for certain stockholders of the Thomas Day Company and for the Thomas Day Company and Theodore J. Savage, Esq., appearing for the Roberts Manufacturing Company, the buyer, Mr. Carr objected to the confirmation of the sale on behalf of certain stockholders, and the Thomas Day Company, and after hearing had, **IT IS ORDERED** that said objection be overruled and exception allowed to the ruling of the Court. Thereupon, **IT IS ORDERED** that the sale of the property to the Roberts Manufacturing Company for the sum of \$42,500.00 be confirmed in accordance with an order this day signed and filed. [37]

(Title of Court and Cause.)

ORDER CONFIRMING SALE OF ASSETS.

Comes now Claude R. King, Receiver of the Thomas Day Company, by Charles A. Christin, and Knight, Boland & Christin, his attorneys, and proves to the satisfaction of the Court that his return of sale of real estate under the notice of sale heretofore

given and made was duly filed in the office of the Clerk; that Monday, November 25, 1929, was the day fixed for hearing; and that said Receiver gave due notice of said hearing to all creditors of said corporation in form and manner as required by this Court, and the hearing of said return coming on regularly this day, after examining the return and hearing the evidence, the Court finds therefrom that said sale was legally made and fairly conducted; that notice of the time, place and terms of sale was duly given in manner and form as prescribed by this Court, and that the price obtained thereat was the reasonable value of the property sold, and that no greater sum can be obtained, and no person objecting thereto or offering a higher price,

IT IS HEREBY ORDERED by the Court that the sale of the property hereinafter described, to Roberts Manufacturing Company, for the sum of forty-two thousand five hundred dollars in cash be, and the same is hereby confirmed, and upon the payment of the price aforesaid, said Claude R. King, Receiver as aforesaid, is authorized and directed to execute to said purchaser a deed of conveyance and bill of sale thereof.

Said assets so sold are: All the assets of every character and description belonging to or used in the business of Thomas Day Company, except accounts receivable; all goods, wares and merchandise of every kind and character contained [38] in the four-story and basement building known as 725 Mission Street, San Francisco, California, and in the place of business of Thomas Day Company in the Barker

Brothers Building, Los Angeles, or in warehouses or other places; all furnitures, fittings, furnishings, and fixtures of every kind and description contained in the offices or other places of business of Thomas Day Company; all machinery, tools, equipment, appliances, and other personal property contained in or used in said company's factory; all patents, patent rights, chucks, dies, patterns, catalogs, drawings, details and all appliances and equipment of the designing department of said business, together with all samples and all automobiles or delivery vehicles; the business and the goodwill of the business of Thomas Day Company; the right of Roberts Manufacturing Company to hold itself out as the successor of Thomas Day Company and as having acquired the goodwill thereof.

IT IS FURTHER ORDERED that all of the above-mentioned property be delivered to Roberts Manufacturing Company by the Receiver upon payment of said purchase price, SAVE AND EXCEPT that said Receiver is hereby authorized to reserve to himself all title to the work in process, and to the exclusive use of the factory and equipment used therein for the period of ninety days after delivery of said property to said Roberts Manufacturing Company.

IT IS FURTHER ORDERED that said Receiver shall pay said Roberts Manufacturing Company for all materials used in completing said work in process, and shall pay the rent for said factory during his occupancy.

IT IS FURTHER ORDERED that said Receiver accept no further contracts for work after the payment to him of the purchase price hereinabove mentioned.

Done in open court this 25th day of November, 1929.

A. F. ST. SURE,
Judge of the U. S. District Court.

[Endorsed]: Filed Nov. 25, 1929. [39]

(Title of Court and Cause.)

DEED OF CONVEYANCE AND BILL OF
SALE.

WHEREAS, the United States District Court for Northern District of California, Southern Division, did on the 25th day of November, 1929, duly give and make its "Order Confirming Sale of Assets" in a cause therein pending entitled Gill Virden Company, a corporation, Complainant, vs. Thomas Day Company, a Corporation, Defendant, being action No. 2244-S, a copy of which said Order Confirming Sale of Assets, marked Exhibit "A," is hereto attached and made a part hereof; said Order Confirming Sale of Assets will be hereinafter referred to as "said order"; and

WHEREAS, Roberts Manufacturing Company, the purchaser named in said order, has paid to the undersigned as such Receiver the full sum of Forty-

two Thousand Five Hundred (\$42,500.00) Dollars, being the purchase price named in said order,—

NOW, THEREFORE, the said Claude R. King, Receiver of the Thomas Day Company, does hereby as such Receiver and pursuant to said order grant, convey, sell, assign, and transfer unto said Roberts Manufacturing Company (a California corporation) all of the assets of Thomas Day Company described in said order, together with the business and the goodwill of the business of Thomas Day Company, and the right of Roberts Manufacturing Company to hold itself out as the successor of Thomas Day Company and as having acquired the goodwill thereof.

SUBJECT to the provisions of said order relative to the retention by the Receiver of the factory and equipment thereof for a period of ninety days as set forth in said order and in said Receiver's Return of Sale filed in said court and [40] cause on the 25th day of November, 1929.

Dated: November 25th, 1929.

CLAUDE R. KING,
Receiver of Thomas Day Company.

EXHIBIT "A."

In the Southern Division of the United States
District Court, for the Northern District of
California.

No. 2244-S.

GILL VIRDEN COMPANY, a Corporation,
Complainant,

vs.

THOMAS DAY COMPANY, a Corporation,
Defendant.

ORDER CONFIRMING SALE OF ASSETS.

Comes now Claude R. King, Receiver of the Thomas Day Company, by Charles A. Christin and Knight, Boland & Christin, his attorneys, and proves to the satisfaction of the Court that his return of sale of real estate under the notice of sale heretofore given and made was duly filed in the office of the Clerk; that Monday, November 25, 1929, was the day fixed for hearing, and that said Receiver gave due notice of said hearing to all creditors of said corporation in form and manner as required by this Court, and the hearing of said return coming on regularly this day, after examining the return and hearing the evidence, the Court finds therefrom that said sale was legally made and fairly conducted; that notice of the time, place and terms of sale was duly given in manner and form as prescribed by this Court, and that the price obtained

thereat was the reasonable value of the property sold, and that no greater sum can be obtained, and no person objecting [41] thereto or offering a higher price,

IT IS HEREBY ORDERED by the Court that the sale of the property hereinafter described, to Roberts Manufacturing Company, for the sum of forty-two thousand five hundred dollars in cash be, and the same is hereby confirmed, and upon the payment of the price aforesaid, said Claude R. King, Receiver as aforesaid, is authorized and directed to execute to said purchaser a deed of conveyance and bill of sale thereof.

Said assets so sold are: all the assets of every character and description belonging to or used in the business of Thomas Day Company, except accounts receivable; all goods, wares and merchandise of every kind and character contained in the four-story and basement building known as 725 Mission Street, San Francisco, California, and in the place of business of Thomas Day Company in the Barker Brothers Building, Los Angeles, or in warehouses or other places; all furniture, fittings, furnishings and fixtures of every kind and description contained in the offices or other places of business of Thomas Day Company; all machinery, tools, equipment, appliances and other personal property contained in or used in said company's factory; all patents, patent rights, chucks, dies, patterns, catalogs, drawings, details and all appliances and equipment of the designing department of said business, together with all samples and all automobiles

or delivery vehicles; the business and the good will of the business of Thomas Day Company, the right of Roberts Manufacturing Company to hold itself out as the successor of Thomas Day Company and as having acquired the good will thereof.

IT IS FURTHER ORDERED that all of the above-mentioned property be delivered to Roberts Manufacturing Company by the Receiver upon payment of said purchase price, SAVE AND EXCEPT that said Receiver is hereby authorized to reserve to himself [42] all title to the work in process, and to the exclusive use of the factory and equipment used therein for the period of ninety days after delivery of said property to said Roberts Manufacturing Company.

IT IS FURTHER ORDERED that said Receiver shall pay said Roberts Manufacturing Company for all materials used in completing said work in process, and shall pay the rent for said factory during his occupancy.

IT IS FURTHER ORDERED that said Receiver accept no further contracts for work after the payment to him of the purchase price hereinabove mentioned.

Done in open court this 25th day of November, 1929.

A. F. ST. SURE,
Judge of the U. S. District Court.

[Endorsed]: Filed Nov. 26, 1929. [43]

[Title of Court and Cause.]

PETITION FOR APPEAL AND ORDER AL-
LOWING SAME.

The above-named defendant, Thomas Day Com-
pany, a corporation, and Whitman Symmes, a stock-
holder of said defendant corporation, feeling them-
selves aggrieved by the Order Confirming Sale of
the Assets of said defendant corporation made and
entered in this action on the 25th day of Novem-
ber, 1929, do hereby appeal from said Order of
Sale to the United States Circuit Court of Appeals
for the Ninth Circuit for the reasons specified in
the assignment of errors which is filed herewith
and they pray that their appeal be allowed, and
that a citation be issued as provided by law and
that a transcript of the record, proceedings and
documents upon which said order was based, duly
authenticated, be sent to the United States Circuit
Court of Appeals for the Ninth Circuit, sitting in
the city of San Francisco, California; and

Your petitioners further pray that a proper
order [44] specifying the security to be required
of them to perfect their appeal be made.

THOMAS, BEEDY, PRESLEY & PARA-
MORE,

GEORGE J. PRESLEY,

Attorneys for Defendant Corporation Thomas Day
Company.

STERLING CARR,

Attorney for Whitman Symmes.

The above and foregoing petition for an appeal is granted and appeal allowed upon giving for costs bond conditioned as required by law, in the sum of \$500.00.

A. F. ST. SURE,
District Judge.

[Endorsed]: Filed Dec. 20, 1929. [45]

[Endorsed]: Filed Dec. 26, 1929.

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now the defendant Thomas Day Company, a corporation, and Whitman Symmes, a stockholder of said defendant corporation, appellants in the above-entitled suit and in connection with their petition for an appeal in this case assign the following errors which said appellants aver have occurred and upon which they rely to reverse the decree entered thereon as appears of record.

The Court erred:

1. In the making and entering of its Order Confirming Sale of the Assets of the above defendant corporation dated November 25, 1929, in that:

(a) The Receiver of said corporation had no authority to sell the assets of said corporation under the notice of sale dated October 31, 1929, as follows: [46]

“NOTICE OF SALE OF ASSETS AT COURT
SALE.

“In the Southern Division of the United States District Court, for the Northern District of California.

“GILL VIRDEN COMPANY, a Corporation,
Complainant,

vs.

THOMAS DAY COMPANY, a Corporation,
Defendant.

“NOTICE OF SALE OF ASSETS AT COURT
SALE.

“Notice is hereby given that the undersigned Claude R. King, Receiver of the Thomas Day Company, a corporation, will sell, Tuesday, the 12th day of November, 1929, in open Court, at ten o'clock a. m. of said day, at the courtroom of the above-entitled Court, before Honorable A. F. St. Sure, Post Office Building, Seventh and Mission Streets, San Francisco, California, for cash, to the highest bidder therefor, the following:

“All the assets of every character and description belonging to or used in the business of Thomas Day Company, except accounts receivable; all goods, wares and merchandise of every kind and character contained in the four-story and basement building known as 725 Mission Street, San Francisco, California, and in the place of business of Thomas Day

Company in the Barker Brothers Building, Los Angeles, or in warehouses or other places; all furniture, fittings, furnishings and fixtures of every kind and description contained in the offices or other places of business of Thomas Day Company; all machinery, tools, equipment, appliances, and other personal property contained in or used in said company's factory; all patents, patent rights, chucks, dies, patterns, catalogs, drawings, details and all appliances and equipment of the designing department of said business, together with all samples and all automobiles or delivery vehicles; the business and the good will of the business of Thomas Day Company; the right of the purchaser to hold itself out as the successor of Thomas Day Company and as having acquired the good will thereof.

“The terms and conditions of sale are cash, lawful money of the United States, 10 per cent at the time of sale and the balance upon confirmation by the above-entitled Court.

“All of the above-mentioned property will be delivered to the purchaser upon confirmation, save and except that the Receiver of the Thomas Day Company reserves to himself all work in process and the exclusive use of the factory and equipment therein and therefor for the period of ninety days after said confirmation.

“Dated October 31, 1929.

“CLAUDE R. KING,

“Federal Receiver of Thomas Day Company.

“CHARLES A. CHRISTIN,

“KNIGHT, BOLAND & CHRISTIN,

“Balfour Building, San Francisco, California,

“Attorneys for Receiver.”

“Oct. 31 to Nov. 12, inclusive—dly.” [47]

(b) The Receiver of said corporation had no authority to set forth in said notice of sale that he would sell the goodwill of the business of the Thomas Day Company and/or the right of the purchaser to hold itself out as successor of the Thomas Day Company and as having acquired the goodwill thereof;

(c) The Receiver of said corporation had no authority to make a sale of the right of the purchaser of the assets of said corporation to hold itself out as the successor of the Thomas Day Company, defendant herein, all as set forth in the said notice of sale of assets;

(d) The Receiver had no jurisdiction over the goodwill and/or the name “Thomas Day Company”;

(e) The Receiver had no jurisdiction or right to give, sell or grant to said purchaser the right to hold itself out as the successor of Thomas Day Company.

2. That the above-entitled court was without jurisdiction;

(a) To make and enter an order confirming the sale by the Receiver of said defendant corporation

of the goodwill and/or the name "Thomas Day Company";

(b) To make any order confirming the sale of the goodwill and/or the name "Thomas Day Company";

(c) To make an order granting said purchaser the right to hold itself out as the successor of Thomas Day Company.

WHEREFORE, the defendant Thomas Day Company, a corporation, and Whitman Symmes, a stockholder of said defendant corporation, appellants herein, pray that the said order be reversed and that the said District Court be instructed to [48] enter such decree or order as the Circuit Court of Appeals shall deem meet and proper on the records.

THOMAS, BEEDY & PRESLEY,
GEORGE PRESLEY,

Attorneys for Thomas Day Company, Defendant Corporation.

STERLING CARR,
Attorney for Whitman Symmes, Appellants.

[Endorsed]: Filed Dec. 20, 1929. [49]

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, BALTIMORE.

The premium charged for this bond is \$10.00 per
annum.

(Title of Court and Cause.)

BOND ON APPEAL.

WHEREAS, an order was made November 25,
1929, confirming sale of the assets of the above-men-
tioned Thomas Day Company, a corporation, and

WHEREAS, the said Thomas Day Company, a
corporation and Whitman Symmes, a stockholder of
said corporation, feeling dissatisfied with said order,
are desirous of appealing to the United States Cir-
cuit Court of Appeals for the Ninth District, sitting
in the City and County of San Francisco, State of
California,—

NOW, THEREFORE, in consideration of the
premises, the undersigned Fidelity and Deposit
Company of Maryland, a body corporate, duly in-
corporated under the laws of the State of Mary-
land and authorized to act as Surety, under the act
of Congress approved August 13, 1894, whose prin-
cipal office is located at Baltimore, State of Mary-
land, does hereby undertake and promise on the
part of the said Thomas Day Company and Whit-
man Symmes, that they will prosecute their said
appeal to effect and answer all costs if they fail to
make good their plea and appeal, not exceeding the

sum of Five Hundred and No/100 (\$500.00) Dollars, to which amount it acknowledges itself justly bound.

And further, it is expressly understood and agreed that in case of a breach of any condition of the above obligation, the Court in the above-entitled matter may, upon notice to the Fidelity and Deposit Company of Maryland, of not less than ten days, proceed summarily in the action or suit in which the same was given to ascertain the amount which said surety is [50] bound to pay on account of such breach, and render judgment therefor against it and award execution therefor.

Dated at San Francisco, California, this 20th day of December, A. D. 1929.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND.

By GUERTIN CARROLL,
Attorney-in-Fact.

[Seal]

Attest: C. A. BEVANS,
Agent.

Approved this 21st day of Dec. 1929.

A. F. ST. SURE,
District Judge.

[Endorsed]: Filed Dec. 21, 1929. [51]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States District Court for
the Northern District of California:

Please prepare, certify and transmit to the Clerk
of the Circuit Court of Appeals for the Ninth Cir-
cuit at San Francisco, California, the transcript of
the record in the above-entitled action containing
the following portions of the record to wit:

1. Bill in equity for Receiver.
2. Answer of defendant.
3. Order appointing Receiver.
4. Substitution of attorneys for defendant.
5. Petition for appointment of temporary Re-
ceiver filed September 11, 1929.
6. Order appointing temporary Receiver filed
September 11, 1929.
7. Amended petition for appointment of tem-
porary Receiver filed September 20, 1929.
8. Order appointing temporary Receiver filed Sep-
tember 30, 1929. [52]
9. Petition for confirmation of sale, or for the
adoption of a reorganization plan, or for the
continuation of receivership, filed September
23, 1929.
10. Notice of sale dated October 31, 1929.
11. Opposition of defendant to petition of Re-
ceiver to sell the goodwill and the right of the
purchaser of the assets to hold itself out as
the successor of Thomas Day Company.

12. Opposition of Whitman Symmes, Mabel Symmes, Anson Blake and Anita D. S. Blake to petition of Receiver to sell the goodwill of defendant and the right of the purchaser of the assets to hold itself out as the successor of Thomas Day Company.
13. Receiver's return of sale.
14. Order confirming sale of assets.
15. Bill of conveyance and bill of sale.
16. Minutes of the Court of November 25, 1929, upon the hearing of the confirmation of the sale of assets.
17. Petition for appeal and order of allowance thereof.
18. Assignment of errors.
19. Bond on appeal.
20. Citation on appeal.
21. Copy of this praecipe.

Dated this 26th day of December, 1929.

THOMAS, BEEDY & PRESLEY,
GEORGE PRESLEY,

Attorneys for Thomas Day Company, Defendant
Corporation.

STERLING CARR,

Attorney for Whitman Symmes.

Received a copy of the within this 26th day of December, 1929.

KNIGHT, BOLAND & CHRISTIN.

ARTHUR DUNNE.

THEODORE J. SAVAGE,

Attorney for Roberts Manufacturing Co.

[Endorsed]: Filed Dec. 26, 1929. [53]

pany, and to Charles A. Christin, Esq., and Knight, Boland and Christin, Esqrs., His Attorneys, and to the Roberts Manufacturing Company and to Theodore J. Savage, Esq., Its Attorney, and to Gill Virden Company and to Arthur Dunn, Jr., Its Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California from an order confirming sale of assets of the above-entitled corporation by Claude R. King, its Receiver, to the Roberts Manufacturing Company, filed and entered on the 25th day of November, 1929, in that certain suit being in Equity No. [55] 2244-S, wherein Gill Virden Company, a corporation, is plaintiff and Thomas Day Company, a corporation, is defendant and the said Thomas Day Company, a corporation, and Whitman Symmes, are appellants, and you are appellees, to show cause, if any there be, why the said order confirming sale of assets, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable A. F. ST. SURE,
United States District Judge for the Northern Dis-

trict of California, this 20th day of December, A. D. 1929.

A. F. ST. SURE,
United States District Judge. [56]

Received a copy of the within this 26th day of December, 1929.

KNIGHT, BOLAND & CHRISTIN.
ARTHUR DUNNE.
THEODORE J. SAVAGE,
Atty. for Roberts Manufacturing Co.

[Endorsed]: Filed Dec. 26, 1929.

[Endorsed]: No. 6077. United States Circuit Court of Appeals for the Ninth Circuit. Thomas Day Company, a Corporation, and Whitman Symmes, Appellants, vs. Claude R. King, Receiver of Thomas Day Company, Roberts Manufacturing Company, a Corporation, and Gill Virden Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed February 18, 1930.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

